IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 380 OF 2005

V.A. Kamat,
G-1, Rivindra – A, next to Hotel Ameya,
Opposite St. Inez Church,
St. Inez, Panaji, Goa 403 001 ..... Petitioner.

V/s.

1. The Sate of Goa,
   through the Chief Secretary,
   Secretariat, Panaji, Goa.

2. The Chief Town Planner,
   Town & Country Planning Department,
   Government of Goa,
   2nd Floor, Dempo Tower,
   Patto, Panaji, Goa.

3. The Commissioner,
   Corporation of City of Panaji,
   Municipal Corporation Building,
   Panaji, Goa.

4. The Director,
   Fire and Emergency Services,
   Directorate of Fire and Emergency
   Services, Government of Goa,
   Panaji, Goa.

5. M/s. Landscape Developers
   through its Managing Partner
   Mr. Dinar Tarcar,
   The Scape Group,
   Campal, Panaji, Goa.

6. Mr. Antonio Clifford Fernandes,
   Near CMM Policlinic Hospital,
   Altinho, Panaji, Goa.

7. North Goa Planning & Development
   Authority, Archives Building,
   Mala Link Road, Panaji, Goa. ..... Respondents.

Mr. Arun Bras de Sa, Advocate for the petitioner.

Mr. S. S. Kantak, Advocate General with Ms. R. Chodankar, , Addl. Govt. Advocate for respondents No.1, 2 and 4.

Mr. A. F. Diniz, Advocate for respondent No.3.

Mr. M. S. Sonak, Advocate for respondent No.5.

Mr. N.N. Sardessai, Advocate for respondent No.6.

CORAM : KSHITIJ R. VYAS, CJ &
RANJANA DESAI, J.

Date of reserving the Order :
6th June, 2006.

Date of pronouncing the Order :
8th June, 2006.

P.C.

The petitioner claims to be a founder trustee of Natoll Jinn Trust (Clean Life Trust). He claims to have filed this petition in larger interest of the members of public. According to him, he is also an affected person being the resident of the City of Panaji on account of unplanned development in breach of Planning Regulations and Statutory Laws. Basically his grievance is about the alleged gross illegalities committed by respondent No.5, a builder, developer and real estate agent who is putting up a project of high rise building adjacent to the Altinho slope under the name and style "The Grande Landscape".

2. Respondent No.1 is the State of Goa, respondent No.2 is the Chief Town Planner, Town and Country Planning Department, Government of Goa and respondent No.3 is the Commissioner, Corporation of the City of Panaji. Respondent No.4 is the Director Fire and Emergency Services, Directorate of Fire and Emergency Services, Government of Goa and respondent No.7 is the North Goa Planning and Development Authorit. Respondent No.6 is the owner of the property.

3. The illegalities that have been pointed out by the petitioner in respect of the project of respondent No.5 are as under :

(a) The road from Panjim Church going to Altinho is shown as proposed 15 metres wide road for the project, whereas, the existing road is only 8 metres and there is no scope for widening the road unless the houses of Adv. Baptista Vaz and family, Celina Almeida, Dr. Antonio Valadares and Mr. Zatye are demolished.

(b) The second road to the project behind Mahalaxmi Temple is shown as 10 metres wide road; whereas at site it admeasures only 4 metres.

(c) The road behind Mahalaxmi Temple touches Dada Vaidya Rad after passing the houses of Mr. Vaglo and Mr. Keny, the width of the road between the two houses admeasures 2.40 metrs and in the approved plans it is shown to be 10 metre; there is

absolutely no possibility of widening the said road.

(d) The third road is shown from Goynchin as 10 metres wide road, when the width of the road is only 3.5 metres; there is no possibility of widening the road as there already exists multistoried buildings at the end of either side of the said road.

(e) There are no off street parking provided, no provision for parking space shown in the project, the existing structures have not been demolished as directed by the licensing authorities.

(f) Gross violation of height restrictions, 9 storied buildings have been shown as having six floors, the remaining floors have been camouflaged by showing stilts, lower ground floor, upper ground floor, contrary to the planning regulations.

(g) In case of fire, the fire tenderers will find it difficult to maneuver which could lead to major disaster to the buildings under construction and the surrounding residential houses.

(h) The project is in gross violation of very rule of the Town and Country Planning Act and Municipality Laws and Bye-laws.

(i) Gross violation of floor plan.

(j) Compound walls are under construction in violation of every rule and are being constructed within the road widening areas.

(k) Rules and Regulations in C-I Zone Permit a building upto a height of 24.10 metres; whereas the present construction has crossed 30 metres in height by camouflaging the remaining

construction by showing stilts, lower ground, upper ground inspite of the builder filing false plans indicating 15 metres wide road and 10 metres wide road when there are no roads of such a width in existence.

(l) Stilts are to be open on two sides, there are no two openings thereby indicating that the stilts will be converted into offices and shops in collusion with the City Corporation Authorities for a price.

(m) On the part of North Goa Planning Development Authority, the plans were approved by the Member Secretary Mr. Ranjit Borkar and on behalf of Panjim Municipal Corporation by Mr. Sanjeet Rodrigues.

(n) The present Commissioner inspite of being aware of the illegalities going on, the project is looking the other side for reasons best known to him.

4. On 27.9.05, this Court directed the petitioner to deposit a sum of Rs.15,000/- in this Court to show his bonafides. Upon compliance of the said direction, Office was directed to issue notices to the respondents. We are informed that the said amount has been deposited in this Court by the petitioner.

5. In response to this Court's notice, affidavits-in-reply have been filed on behalf of respondent No.7 by Shri Rajesh Naik, Member

Secretary of respondent No.7. Affidavits-in-reply have also been filed on behalf of respondent No.5 by Shri Dinar Tarcar, Managing Partner of respondent No.5. These affidavits are filed to oppose the admission of the present petition.

6. We have heard at considerable length Mr. Arun Bras de Sa, the learned Counsel for the petitioner in support of the petition. Mr. D'Sa has reiterated all the contentions raised by the petitioner in the instant petition. He submitted that respondent No.5 has committed gross illegalities and this Court should take serious note of the said illegalities. He drew our attention to the original site plan and the revised site plan and contended that respondent No.5 has increased the permissible F.A.R. He submitted that the fact that after filing of the petition respondent No.5 had to submit the revised plans itself indicates that respondent No.5 is guilty of having committed gross illegalities. He argued that such illegalities cannot be allowed to persist and it is necessary for this Court to issue directions to the respondents, inter alia, to remove the unauthorised structures. The learned Counsel urged that in the circumstances, in the public interest, the petition deserves to be admitted.

7. We have also heard the learned Advocate General Shri S. S. Kantak. The learned Advocate General contended that the petition

suffers from laches. The petitioner has not given any acceptable explanation for delay in approaching the Court. The petition, according to the learned Advocate General, therefore, deserves to be dismissed on the ground of laches. The learned Advocate General drew our attention to the affidavit filed on behalf of respondent No.7 and contended that proper explanation has been offered by respondent No.7 as regards each and every allegation made by the petitioner. He submitted that no case is made out by the petitioner for admission of this petition.

8. Shri Sonak, learned Counsel appearing for respondent No.5 also contended that the petitioner is guilty of laches and hence, the petition should be dismissed in limine. He pointed out that the petitioner had earlier filed a similar petition which was dismissed by this Court in limine. The learned Counsel relied on the Judgment of this Court in Writ Petition No.98/02 decided on 19th June, 2002 in **Adolf Fernandes and another vs. The State of Goa and others.** He contended that it is clear beyond doubt that the petition is not filed in public interest, but it is filed for satisfaction of individual whims. According to the learned Counsel, therefore, the petition should be dismissed in limine after saddling the petitioner with heavy costs.

9. In **Adolf Fernandes's case (supra),** this Court was

concerned with public interest litigation which suffered from laches. The petition was directed against the permissions and approvals granted to the builders to develop their property. The construction of eight buildings had already come up upto four floors. There was no explanation for delay in approaching the Court. In the circumstances, the petition was dismissed, inter alia, on the ground of laches. This Court quoted the observations of the Supreme Court in **Narmada Bachao Andolan v. Union of India and ors,** (2000) 10 SCC 664. It would be advantageous to quote the same paragraph, which reads thus :

> "Public interest litigation (PIL) was an innovation essentially to safeguard and protect the human rights of those people who were unable to protect themselves. With the passage of time PIL jurisdiction has been ballooning so as to encompass within its ambit subjects such as probity in public life, granting of largeesse in the form of licences, protecting environment and the like. But the balloon should not be inflated so much that it bursts. Public interest litigation should not be allowed to degenerate to becoming publicity interest litigation or private inquisitiveness litigation."

After quoting the above paragraph, this Court observed that the petition before it was a clear abuse of process of law. It was further observed that public interest litigation cannot be used to remove

distress of any particular individual.

10. We may also refer to the Judgment of the Supreme Court in **R and M. Trust v. Koramangala Residents Vigilance Group and ors.,** AIR 2005 SC 894, where while dealing with a Public Interest Litigation filed after inordinate delay after construction of the building in question was complete, the Supreme Court observed thus :

> "There is no doubt that delay is a very important factor while exercising extraordinary jurisdiction under Article 226 of the Constitution. We cannot disturb the third party interest created on account of delay. Even otherwise also why Court should come to rescue of person who is not vigilant of his rights ?

11. In our opinion, the observations of the Supreme Court in **Narmada Bachao Andolan's case (supra)** and **R and M. Trust's case (supra)** and the observations of this Court in **Adolf Fernandes's case (supra)** are squarely attracted to the present case.

12. From the affidavits filed by the respondents and from the annexures thereto, it is evident that the plans of the construction, in question, were approved and development permission was issued on 21.1.03. Construction was started on 23.3.03. When the petition was

filed on 19.9.05, the construction of Residential Block was completed to the extent of 98 % and Commercial Block was completed to the extent of 100 % and by the time the notice issued by this Court was served on respondent No.5, the construction of Block I was completed to the extent of 75 %. The petitioner's explanation for the delay that he noticed construction in the last week of February 2005 is totally unacceptable as, admittedly, the building, in question, is constructed in the heart of city of Panaji. Besides, respondent No.5 had given wide publicity to the project by issuing advertisements in the newspapers in **May, 2005** along with the sketch of the construction showing number of floors. Therefore, it is inconceivable that the petitioner would not have noticed the construction.

13. It is pertinent to note that the completion certificate was issued on 3.11.05 and the occupancy certificate was issued on 27.1.06. We are informed that the possession of the constructed premises has already been handed over to the buyers. Third party rights have been created. Therefore, in the light of the Judgments of the Supreme Court referred to hereinabove, the present petition cannot be entertained. In our opinion, unexplained delay disentitles the petitioner from getting any relief from this Court.

14. There is also no substance in the contention that revised plans were submitted by respondent No.5 after filing of the petition. Respondent No.5 had submitted revised plans for approval to the then

Panaji Planning and Development Authority on 13.1.2005. The petition was filed on 19.9.2005. Respondent No.5 received the notice of this Court on 17.10.2005. In the meantime, Panaji Planning & Development Authority came to be dissolved and as such, revised plans had to be resubmitted to respondent No.3 on 1.3.2005. Respondent No.3 forwarded them to the Town & Country Planning Department in terms of laws. Thereafter, the North Goa Planning & Development Authority was constituted and as such, the revised plans were submitted to the same on 6.10.2005. This submission of the petitioner must, therefore, fail.

15. We have also noticed that the affidavits of Shri Rajesh Naik, Member Secretary of respondent No.7 deal with each and every alleged illegality stated in the petition. On a perusal of the said affidavits, we are satisfied that the allegations made by the petitioner are without substance. It is pertinent to note that an affidavit has been filed on behalf of the Fire Department, stating that NOC is issued to respondent No.5 as respondent No.5 has complied with fire safety requirements. Though the learned Counsel for the petitioner has argued before us that respondent No.5 has increased the permissible FAR, there is no specific averment made in the petition by him to that effect. On a query made by this Court in that behalf, the learned Counsel was unable to point out any such specific averment. In the facts of this case, it is not possible for us to take cognizance of such

oral submissions. Besides, on a perusal of the affidavits and the annexures thereto, we are unable to come to a conclusion that there is any increase of permissible FAR. We are more than convinced that there is no substance in the petition. We have noted that the petitioner had filed a similar petition in this Court which was dismissed in limine. Filing of such belated petitions which have no substance, must be discouraged. Hence, we deem it fit to saddle the petitioner with costs while dismissing the petition. We have already noted that a sum of Rs.15,000/- has been deposited by the petitioner in this Court pursuant to the Order passed by this Court. In our opinion, the said amount needs to be treated as exemplary costs imposed by us on the petitioner. Hence, we pass the following Order :

The petition is rejected. Considering the fact that the petition suffers from laches and that no explanation is offered for the laches and that the allegations made in the petition are devoid of substance, the petitioner is ordered to pay costs quantified at Rs.15,000/-. The amount of Rs.15,000/- which the petitioner has already deposited in this Court is directed to be treated as costs imposed on the petitioner. The said amount of Rs.15,000/- is ordered to be credited to the Goa State Legal Services Authority.

KSHITIJ R. VYAS, CJ.

RANJANA DESAI, J.

ssm.